

REMARKS

The Examiner is thanked for the thorough examination of the present application. The Office Action mailed April 2, 2008 rejected claims 1-8 and 15-26. This is a full and timely response to that outstanding Office Action. Upon entry of the amendments in this response, claims 1-8 and 15-26 are pending. More specifically, claims 1, 3, 15-21, and 23 are amended. No new matter is added to the present application by these amendments. These amendments are specifically described hereinafter.

I. Present Status of Patent Application

Claims 15 and 21 are rejected under 35 U.S.C. 101 because the claimed invention is allegedly directed to non-statutory subject matter. Claims 1, 2, 4-8, 15, 16, 18-22, and 24-26 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over *Erjanne* (U.S. Patent No. 6,490,271) in view of *Uemura* (U.S. Patent No. 6,430,161). Claims 3, 17, and 23 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over *Erjanne* (U.S. Patent No. 6,490,271) in view of *Uemura* (U.S. Patent No. 6,430,161) and in further view of *Sherman* (U.S. Patent No. 6,434,513). To the extent that these rejections have not been rendered moot by the amendment of claims, they are respectfully traversed.

II. Examiner Interview

Applicant first wishes to express sincere appreciation for the time that Examiner Bates spent with Applicant's representative Benjie Balser during a May 1, 2008

telephone discussion regarding the above-identified Office Action. During the interview, various features described in the patent application and recited in the independent claims, including measuring the CPU load, and *Erjanne* were discussed, and the outcome of this discussion is addressed herein. Applicants believe that the amendments presented herein are consistent with the suggestions and/or overall discussion with Examiner Bates. Thus, Applicant respectfully requests that Examiner Bates carefully consider this amendment and response.

III. **Rejections Under 35 U.S.C. §101**

A. Claim 15

The Office Action rejects claim 15 under 35 U.S.C. §101 because the claimed invention is allegedly directed to non-statutory subject matter. Although Applicant respectfully disagrees, in an effort to address the Examiner's concerns and to facilitate prosecution on the merits, claim 15 has been amended to recite "a computer-readable medium." In view of this amendment, Applicant respectfully submits that the rejection of claim 15 should be withdrawn.

B. Claim 21

The Office Action rejects claim 21 under 35 U.S.C. §101 because the claimed invention is allegedly directed to non-statutory subject matter. Although Applicant respectfully disagrees, in an effort to address the Examiner's concerns and to facilitate prosecution on the merits, claim 21 has been amended to recite "a computer-readable

medium.” In view of this amendment, Applicant respectfully submits that the rejection of claim 21 should be withdrawn.

IV. Rejections Under 35 U.S.C. §103(a)

A. Claims 1-8

The Office Action rejects claims 1, 2, and 4-8 under 35 U.S.C. §103(a) as allegedly being unpatentable over *Erjanne* (U.S. Patent No. 6,490,271) in view of *Uemura* (U.S. Patent No. 6,430,161). The Office Action rejects claim 3 under 35 U.S.C. §103(a) as allegedly being unpatentable over *Erjanne* (U.S. Patent No. 6,490,271) in view of *Uemura* (U.S. Patent No. 6,430,161) and in further view of *Sherman* (U.S. Patent No. 6,434,513). For at least the reasons set forth below, Applicant respectfully traverses the rejection to the extent not rendered moot by amendment.

Independent claim 1, as amended, recites:

1. A method for reducing CPU loading in a software receiver for a packet based communications system comprising the steps of:
measuring the current CPU load by measuring an interrupt latency;
determining whether the CPU load has exceeded a predetermined threshold;
responsive to determining that the CPU has exceeded a predetermined threshold, entering a power save mode, thereby signaling the communications system transmitter to inhibit packet transmission and packet reception;
monitoring the CPU load while the transmitter is inhibited;
determining that the CPU load has fallen below a predetermined threshold; and
signaling the communications system transmitter to begin transmitting packets once the CPU load has fallen below the predetermined threshold.

(Emphasis added).

Applicant respectfully submits that claim 1 is patentably distinct from the cited art for at least the reason that the cited art does not disclose the features emphasized above. For a proper rejection of a claim under 35 U.S.C. §103, the cited combination of references must disclose, teach, or suggest all elements/features of the claim at issue. *See, e.g., In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988) and *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

Applicant respectfully submits that the amendments to claim 1 have rendered the rejection moot. Applicant respectfully submits that independent claim 1 is allowable for at least the reason that the combination of *Erjanne* and *Uemura* does not disclose, teach, or suggest at least **measuring the current CPU load by measuring an interrupt latency**. Even if, assuming for the sake of argument, *Erjanne* discloses monitoring packet transmission rates, *Erjanne* fails to disclose measuring the current CPU load by measuring an interrupt latency. Even if, assuming for the sake of argument, *Uemura* discloses monitoring packet transmission rates, *Uemura* fails to disclose measuring the current CPU load by measuring an interrupt latency. As the cited combination of references does not disclose, teach, or suggest, either implicitly or explicitly, all the elements of claim 1, the rejection should be withdrawn for at least that reason.

For at least the reason that independent claim 1 is allowable over the cited references of record, dependent claims 2-8 (which depend from independent claim 1) are allowable as a matter of law for at least the reason that dependent claims 2-8 contain all the features of independent claim 1. *See Minnesota Mining and*

Manufacturing Co. v. Chemque, Inc., 303 F.3d 1294, 1299 (Fed. Cir. 2002)
Jeneric/Pentron, Inc. v. Dillon Co., 205 F.3d 1377, 54 U.S.P.Q.2d 1086 (Fed. Cir. 2000);
Wahpeton Canvas Co. v. Frontier Inc., 870 F.2d 1546, 10 U.S.P.Q.2d 1201 (Fed. Cir. 1989). Therefore, the rejection of claims 2-8 should be withdrawn and the claims allowed.

Additionally, with regard to the rejection of claim 3, *Sherman* does not make up for the deficiencies of *Erjanne* and *Uemura* noted above. Therefore, claim 3 is considered patentable over any combination of these documents for at least the reason that claim 3 incorporates allowable features of claim 1 as set forth above.

B. Claims 15-20

The Office Action rejects claims 15, 16, and 18-20 under 35 U.S.C. §103(a) as allegedly being unpatentable over *Erjanne* (U.S. Patent No. 6,490,271) in view of *Uemura* (U.S. Patent No. 6,430,161). The Office Action rejects claim 17 under 35 U.S.C. §103(a) as allegedly being unpatentable over *Erjanne* (U.S. Patent No. 6,490,271) in view of *Uemura* (U.S. Patent No. 6,430,161) and in further view of *Sherman* (U.S. Patent No. 6,434,513). For at least the reasons set forth below, Applicant respectfully traverses the rejection to the extent not rendered moot by amendment.

Independent claim 15, as amended, recites:

15. A computer-readable medium encoded with:
digital logic configured to:
measure the current CPU load by measuring the response time of the CPU to a request for processor time;
determine whether the CPU load has exceeded a predetermined threshold;
responsive to determining that the CPU has exceeded a predetermined threshold, enter a power save mode, thereby signaling the communications system transmitter to inhibit packet transmission and packet reception;
monitor the CPU load while the transmitter is inhibited;
determine whether the CPU load has fallen below a predetermined threshold; and
signal the communications system transmitter to begin transmitting packets once the CPU load has fallen below the predetermined threshold.

(Emphasis added).

Applicant respectfully submits that claim 15 is patentably distinct from the cited art for at least the reason that the cited art does not disclose the features emphasized above. Applicant respectfully submits that the amendments to claim 15 have rendered the rejection moot. Applicant respectfully submits that independent claim 15 is allowable for at least the reason that the combination of *Erjanne* and *Uemura* does not disclose, teach, or suggest at least **measure the current CPU load by measuring the response time of the CPU to a request for processor time**. Even if, assuming for the sake of argument, *Erjanne* discloses monitoring packet transmission rates, *Erjanne* fails to disclose measure the current CPU load by measuring the response time of the CPU to a request for processor time. Even if, assuming for the sake of argument, *Uemura* discloses monitoring packet transmission rates, *Uemura* fails to disclose measure the current CPU load by measuring the response time of the CPU to a request

for processor time. As the cited combination of references does not disclose, teach, or suggest, either implicitly or explicitly, all the elements of claim 15, the rejection should be withdrawn for at least that reason.

For at least the reason that independent claim 15 is allowable over the cited references of record, dependent claims 16-20 (which depend from independent claim 15) are allowable as a matter of law for at least the reason that dependent claims 16-20 contain all the features of independent claim 15. Therefore, the rejection of claims 16-20 should be withdrawn and the claims allowed.

Additionally, with regard to the rejection of claim 17, *Sherman* does not make up for the deficiencies of *Erjanne* and *Uemura* noted above. Therefore, claim 17 is considered patentable over any combination of these documents for at least the reason that claim 17 incorporates allowable features of claim 15 as set forth above.

C. Claims 21-26

The Office Action rejects claims 21, 22, and 24-26 under 35 U.S.C. §103(a) as allegedly being unpatentable over *Erjanne* (U.S. Patent No. 6,490,271) in view of *Uemura* (U.S. Patent No. 6,430,161). The Office Action rejects claim 23 under 35 U.S.C. §103(a) as allegedly being unpatentable over *Erjanne* (U.S. Patent No. 6,490,271) in view of *Uemura* (U.S. Patent No. 6,430,161) and in further view of *Sherman* (U.S. Patent No. 6,434,513). For at least the reasons set forth below, Applicant respectfully traverses the rejection to the extent not rendered moot by amendment.

Independent claim 21, as amended, recites:

21. A system for reducing CPU loading in a software receiver for a packet based communications system comprising a computer-readable medium comprising:

means for measuring the current CPU load by measuring an interrupt latency;

means for determining whether the CPU load has exceeded a predetermined threshold;

means for, responsive to determining that the CPU has exceeded a predetermined threshold, entering a power save mode, thereby signaling the communications system transmitter to inhibit packet transmission and packet reception;

means for monitoring the CPU load while the transmitter is inhibited;

means for determining that the CPU load has fallen below a predetermined threshold; and

means for signaling the communications system transmitter to begin transmitting packets once the CPU load has fallen below the predetermined threshold.

(Emphasis added).

Applicant respectfully submits that claim 21 is patentably distinct from the cited art for at least the reason that the cited art does not disclose the features emphasized above.

Applicant respectfully submits that the amendments to claim 21 have rendered the rejection moot. Applicant respectfully submits that independent claim 21 is allowable for at least the reason that the combination of *Erjanne* and *Uemura* does not disclose, teach, or suggest at least **means for measuring the current CPU load by measuring an interrupt latency**. Even if, assuming for the sake of argument, *Erjanne* discloses monitoring packet transmission rates, *Erjanne* fails to disclose means for measuring the current CPU load by measuring an interrupt latency. Even if, assuming for the sake of argument, *Uemura* discloses monitoring packet transmission rates, *Uemura* fails to disclose means for measuring the current CPU load by measuring an interrupt latency. As the cited combination of references does not disclose, teach, or suggest, either

implicitly or explicitly, all the elements of claim 21, the rejection should be withdrawn for at least that reason.

For at least the reason that independent claim 21 is allowable over the cited references of record, dependent claims 22-26 (which depend from independent claim 21) are allowable as a matter of law for at least the reason that dependent claims 22-26 contain all the features of independent claim 21. Therefore, the rejection of claims 22-26 should be withdrawn and the claims allowed.

Additionally, with regard to the rejection of claim 23, *Sherman* does not make up for the deficiencies of *Erjanne* and *Uemura* noted above. Therefore, claim 23 is considered patentable over any combination of these documents for at least the reason that claim 23 incorporates allowable features of claim 21 as set forth above.

V. Miscellaneous Issues

Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, or statements interpreted similarly, should not be considered well known for the particular and specific reasons that the claimed combinations are too complex to support such conclusions and because the Office Action does not include specific findings predicated on sound technical and scientific reasoning to support such conclusions.

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1-8 and 15-26 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

It is believed that no extensions of time or fees for net addition of claims are required, beyond those which may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor (including fees for net addition of claims) are hereby authorized to be charged to deposit account No. 50-0835.

Respectfully submitted,

/BAB/

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